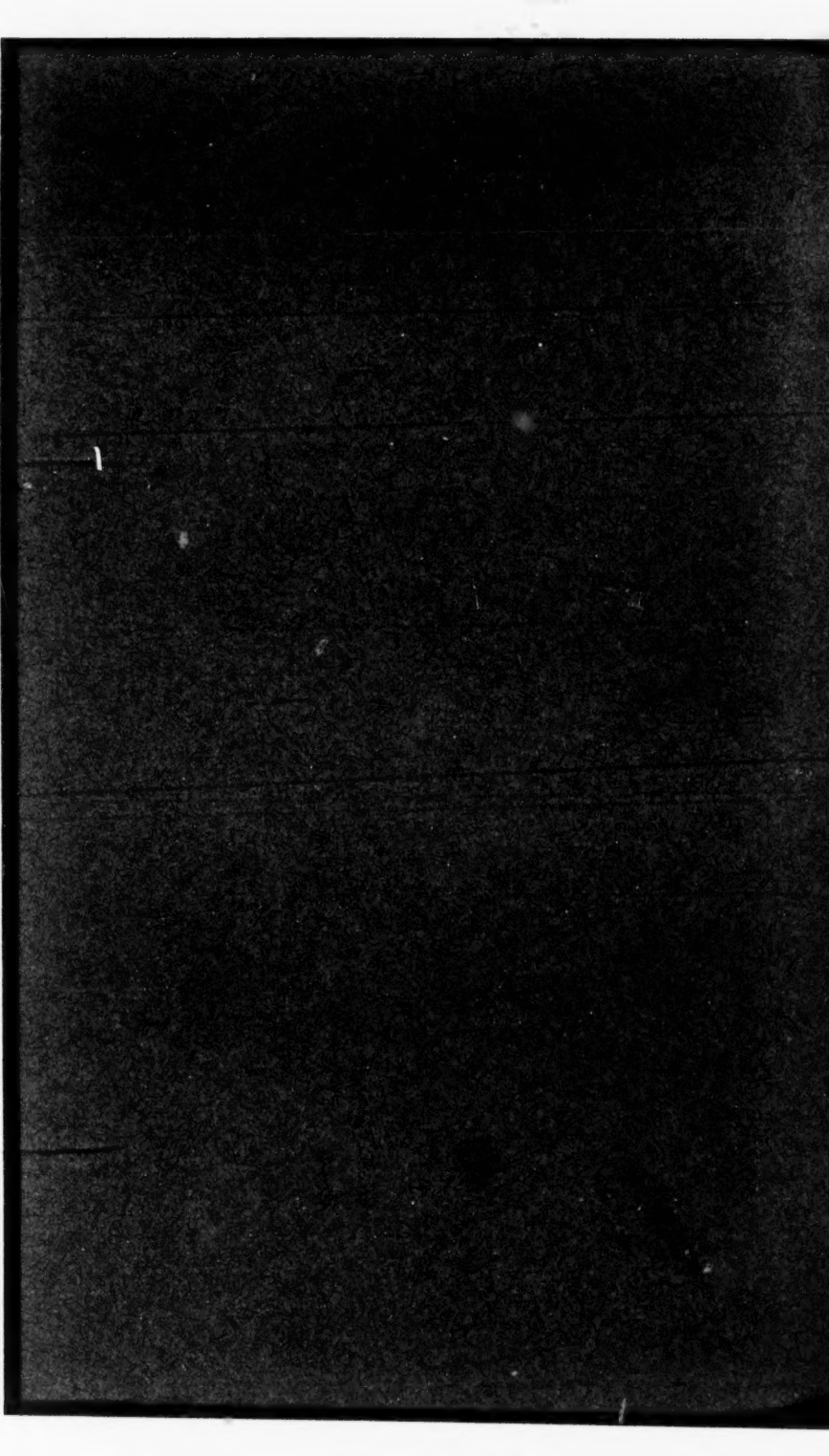

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 97

WEST VIRGINIA GLASS SPECIALTY COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (S. R. 170–174)[1] is reported in 134 F. (2d) 551. The findings of fact, conclusions of law, and order of the National Labor Relations Board (P. A. 4–28) are reported in 43 N. L. R. B. 1322.

[1] The appendices filed by the company and the Board in the lower court are referred to as "P. A." and "B. A.", respectively. The supplemental proceedings in the court below have been bound into the Board's appendix (pp. 158–184) and are referred to as "S. R.". Unprinted portions of the record are referred to as "Tr."

JURISDICTION

The decree of the circuit court of appeals (S. R. 174–175) was entered on March 25, 1943. A petition for rehearing filed by petitioner (S. R. 177–182) was denied on April 22, 1943 (S. R. 183). The petition for a writ of certiorari was filed on June 11, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTION PRESENTED

Whether there is substantial evidence supporting the findings of the Board, sustained by the court below, that petitioner dominated, interfered with, and supported a labor organization of its employees known as the Independent Glass Decorators Union of West Virginia, including Local 1 and Branches 1 and 2 thereof, and that thereby and in other respects petitioner interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act.[2]

[2] Section 7 provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. (29 U. S. C., sec. 157.)

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix to the Petition (pp. 27–28).

STATEMENT

Upon the usual proceedings, the Board issued its findings of fact, conclusions of law, and order (P. A. 4–28). The facts, as found by the Board and shown by the evidence, may be summarized as follows:[3]

For a number of years prior to July 1939, petitioner, as a member of the National Association of Manufacturers of Pressed and Blown Glassware (herein called the Association), had operated under collective bargaining contracts which had been negotiated with the Flints [4] by the Association on behalf of the pressed and blown glassware industry (P. A. 5; B. A. 120). However, after incurring net operating losses in 1938 and 1939 and failing to induce the Association to insist on wage reductions in its 1939–1940 contract, petitioner withdrew from the Association and itself attempted to persuade the Flints to accept reductions in the wage rates of its employees (P.

[3] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

[4] American Flint Glass Workers' Union of North America, affiliated with the American Federation of Labor (P.A. 4; B.A. 119).

A. 5–7; B. A. 120–122). Failing in these negotiations, it announced that commencing March 4, 1940, the plant would operate under the reduced wage schedule proposed by petitioner (P. A. 7–8; B. A. 95–96, 121–126).

The plant had been shut down for about a week prior to March 4 to facilitate the negotiations (P. A. 8; B. A. 121). On March 3, petitioner's vice president and manager, John Weber, Sr., met with several committees of its employees, representing different locals of the Flints, and attempted to persuade them to return to work under the reduced rates. He told one group of employees that he was "getting good and tired of having" the Flints run his business and advised them to "get next to" themselves and "form a union of [their] own" (P. A. 8; P. A. 95). He added that if they formed their own union they could purchase shares of stock and have a representative on petitioner's board of directors (P. A. 8–9; P. A. 91–92). He told another group of the employees that the Flints would not take care of them if they struck, that he "would never have the Flints again" and advised them that if they returned to work they could have their own union and "would get along like a big family" (P. A. 9–10; B. A. 19, 21).

The plant opened with only a skeleton force on March 4, a great majority of the employees remaining out on strike (P. A. 12; B. A. 23, 122; P. A. 96). In effectuation of the advice given by

Mr. Weber, Sr., on March 3 to the several Flint committees, petitioner on March 13 posted at the plant a plan for a "working agreement" under which the employees might return to work (P. A. 13; B. A. 55, 115, 130–131). The plan contemplated the formation of a "workers' committee," to whom all new applicants for employment were to be submitted for approval; it set up a bipartisan procedure for hearing discharge grievances; it provided for an employee representative on petitioner's board of directors; and it assured the employees that they were entitled "to join or form a union of their own" (P. A. 12–13; B. A. 130–131).[5]

About a week later, petitioner sold a share of stock on credit to each of a group of employees who agreed "to cooperate 100 percent" with petitioner,[6] and a few days later, on March 23, these

[5] The plan, substantially in the form posted, was drawn up by Victor Melphis and several other employees of the hot metal department (P.A. 12; B.A. 77–79, 115). They were then serving on the picket line and receiving strike benefits from the Flints and, for this reason, Melphis testified, he told John Weber, Jr. (petitioner's secretary and sales manager and a good friend of Melphis), to whom he presented the plan, that he wanted it "to look like it was coming from the company" (P.A. 12; B.A. 79, 103). The plan was in the form of a resolution of petitioner's board of directors (P.A. 13; B. A. 130). Frank Coslick, who thereafter proceeded to form Local 1 of the Independent, admitted that he himself had no knowledge of the origin of the posted plan (B.A. 55–56, Tr. 464).

[6] The indebtedness arising from these subscriptions was for the most part subsequently cancelled (P. A. 13, B. A. 96–97, 106–108).

employees returned to work (P. A. 13; B. A. 106, 77). One of them, Clarence Tawney, became the first employee representative on petitioner's board of directors (P. A. 13; B. A. 98).[7] On the very day that this group returned to work and again several days later, petitioner's officers met with representatives of the Flints and sought to induce the remaining strikers to return to work by offering to sell them stock on credit and promising them a representative on petitioner's board of directors if they formed a union of their own (P. A. 13–14; B. A. 4–7).

Shortly thereafter, during April, Local 1 of the Independent came into existence in the decorating department of the plant (P. A. 15–17; B. A. 27–32, 40–49). Petitioner promptly recognized it and entered into a working agreement with it (P. A. 16–17; B. A. 53–55, 63, 115–116, 127–129, 134) which, as the court below noted, "did not regulate the wages but provided for the procedure by which the Independent was to receive and hear charges against its members, and stipulated the penalties to be imposed upon members for failing to attend the union meetings" (S. R. 172). During the next two months, after large numbers of the strikers had returned to work, Branches 1 and

[7] At stockholders' meetings held at the end of the years 1940 and 1941 two other stockholder employees, who were also officers of Branch 1 of the Independent described *infra*, p. 7, were elected members of the board of directors (P. A. 13; B. A. 98, Tr. 673, 682, 1157, 1160).

2 of the Independent were formed for the hot metal department and the miscellaneous workers, respectively (P. A. 18–20; B. A. 67–68, 70–71, 80–83, 89, 136, 149–150, 151, Tr. 671). Petitioner promptly recognized these branches and entered into working agreements with them, which related not only to the terms of employment, but also to the government of the branches (P. A. 18–20; B. A. 86–87, 110, 141–144, 146, 153–157, S. R. 172). Membership in all three divisions of the Independent was automatic after a prescribed probationary period, and each of their working agreements provided for participation of employee committees in the hiring of all employees, substantially as provided in the proposed plan for a working agreement posted by petitioner on March 13 (P. A. 13, 16, 20; B. A. 127, 143, 154).

During the period when the Independent and its branches were being formed, petitioner's officers sought out a number of the individual strikers and attempted to persuade them to abandon the Flints and join the Independent (P. A. 17, 21–22; B. A. 7–8, 17; P. A. 69–70, 78, 83–84, 88). Petitioner also gave aid and support to the Independent in its social activities by lending its truck and some benches and tables to the Independent, by permitting the country home of one of its officials to be used by the Independent for one of its picnics and, upon one occasion, by paying for refreshments

for Independent members (P. A. 22; P. A. 112–114, 121; B. A. 17, 76, 99, 100, 103–104, 116).

Upon the foregoing facts, the Board concluded that petitioner had engaged in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act [8] and entered its order directing petitioner to cease and desist from engaging in such unfair labor practices, to withdraw recognition from and disestablish the Independent and its branches, and to post appropriate notices (P. A. 26–27).

On November 25, 1942, petitioner filed in the court below a petition to review and set aside the Board's order, and on December 10, 1942, the Board filed its answer and petition for enforcement (S. R. 158–169). On March 25, 1943, the court handed down its opinion (S. R. 170–174) and entered its decree (B. A. 174–175) enforcing the Board's order in full.

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[8] Section 8 provides in part:

> It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay. (29 U. S. C., sec. 158.)

ARGUMENT

1. Petitioner's statement of the questions involved raises only the issue of the substantiality of evidence supporting the Board's findings (Pet. 2–3). This issue presents no question of general importance. Moreover, the facts found by the Board and summarized in the Statement, *supra*, pp. 3–8, furnish ample support for the challenged findings, as the court below held.

2. Petitioner in its argument (Pet. 20–21) also urges that utterances of petitioner's officials hostile to the Flints and suggestions by these officials to a number of the employees that they abandon the Flints and form or join another union, had no persuasive effect upon the employees thus addressed, and that petitioner's right of free speech was abridged to the extent that such statements formed part of the Board's basis for concluding that petitioner had engaged in unfair labor practices. These contentions are without merit. A similar argument based on the First Amendment was rejected in *National Labor Relations Board* v. *Virginia Electric & Power Co.*, 314 U. S. 469, 477. And it was not necessary for the Board to show that petitioner's interference bore fruit.[9] Moreover, the result of the patent interference is evidenced by the fact that many of the strikers actually

[9] *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 588; *National Labor Relations Board* v. *John Engelhorn & Sons*, 134 F. (2d) 553, 556–557 (C. C. A. 3); *Western Cartridge Co.* v. *National Labor Relations Board*, 134 F. (2d) 240, 244 (C. C. A. 7); *National Labor Relations*

abandoned the Flints and joined or helped to form the Independent and its branches. The statements of petitioner's officials were considered by the Board "not in isolation but as part of a pattern of events adding up to the conclusion of domination and interference." *Virginia Electric and Power Co.* v. *National Labor Relations Board,* decided June 7, 1943, No. 709, October Term, 1942, pamphlet p. 5. "Congress entrusted the Board, not the Courts, with the power to draw inferences from the facts" (*National Labor Relations Board* v. *Link-Belt Co.,* 311 U. S. 584, 597) and the Board's inference that the statements in question, under the facts summarized in the Statement, were coercive is reasonable and therefore conclusive. *National Labor Relations Board* v. *Electric Vacuum Cleaner Co.,* 315 U. S. 685, 697; *National Labor Relations Board* v. *Waterman Steamship Corp.,* 309 U. S. 206, 209; *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.,* 316 U. S. 105, 106; *National Labor*

Board v. *American Mfg. Co.*, 132 F. (2d) 740, 742 (C. C. A. 5); *National Labor Relations Board* v. *Aintree Corp.*, 132 F. (2d) 469, 472 (C. C. A. 7), certiorari denied, March 15, 1943, No. 702, October Term, 1942; *National Labor Relations Board* v. *McLain Fire Brick Co.*, 128 F. (2d) 393 (C. C. A. 3); *National Labor Relations Board* v. *Baldwin Locomotive Works*, 128 F. (2d) 39, 50 (C. C. A. 3); *Rapid Roller Co.* v. *National Labor Relations Board*, 126 F. (2d) 452, 457 (C. C. A. 7), certiorari denied, 317 U. S. 650; *Tyne Co.* v. *National Labor Relations Board*, 125 F. (2d) 832, 836 (C. C. A. 7); *Humble Oil & Refining Co.* v. *National Labor Relations Board*, 113 F. (2d) 85, 92 (C. C. A. 5).

Relations Board v. *Southern Bell Telephone and Telegraph Co.*, decided May 3, 1943, Nos. 460–461, October Term, 1942, pamphlet p. 7.

3. Petitioner has isolated from their context several quotations from the opinion below in an attempt to show that that court applied an improper standard in considering whether there was support in the evidence for the Board's findings (Pet. 3, 5–6, 19, 25). Whether or not the language of the opinion below is wholly acceptable, the court's decision is correct and no further review appears necessary. A decision will not be disturbed because "the lower court relied upon a wrong ground or gave a wrong reason." *Helvering* v. *Gowran*, 302 U. S. 238, 245, and cases cited; *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80, 88.

Moreover, a reading of the entire opinion below on the scope of judicial review does not show a misapplication of the principles of such review. Indeed, the court below approved and quoted at length from this Court's pronouncements on the subject in *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 208–209, and concluded that "substantial evidence was presented, which supports the finding of the Board" (S. R. 173–174). In many other Board cases reviewed during the past year, the Fourth Circuit has demonstrated its familiarity with and adherence to the scope of review of administrative

action.[10] Nor has that court been unduly reluctant to set aside Board decisions.

CONCLUSION

The decree of the court below is correct and presents neither a conflict of decisions nor any question of general importance. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

OSCAR COX,
Acting Solicitor General.

ROBERT B. WATTS,
General Counsel,

ERNEST A. GROSS,
Associate General Counsel,

RUTH WEYAND,

FANNIE M. BOYLS,
Attorneys,

National Labor Relations Board.

JULY 1943.

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[10] *National Labor Relations Board* v. *Feinberg Hosiery Mill, Inc.*, 134 F. (2d) 620; *North Carolina Finishing Co.* v. *National Labor Relations Board*, 133 F. (2d) 714, 718; *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 132 F. (2d) 390, 395, affirmed, June 7, 1943, No. 709, October Term, 1942; *Hickory Chair Mfg. Co.* v. *National Labor Relations Board*, 131 F. (2d) 849, 850; *National Labor Relations Board* v. *Quality & Service Laundry*, 131 F. (2d) 182, 183, certiorari denied, March 15, 1943, No. 706, October Term, 1942; *National Labor Relations Board* v. *Rock Hill Printing & Finishing Co.*, 131 F. (2d) 171, 175; *Great Southern Trucking Co.* v. *National Labor Relations Board*, 127 F. (2d) 180, 186–187, certiorari denied, 317 U. S. 652; *Hazel-Atlas Glass Co.* v. *National Labor Relations Board*, 127 F. (2d) 109, 116–118.

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